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CENTER FOR SEAFARERS' RIGHTS

241 WATER STREET, NEW YORK, NY 10038 • TEL. (212) 349-9090 • FAX. (212) 349-9090 • csr@seamenschurch.org

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DOUGLAS B. STEVENSON, ESQ.
DIRECTOR

January 23, 2003

Document Management Facility
(USCG-2002-14069) - /7
U.S. Department of Transportation
Room PL-401
400 Seventh Street SW
Washington, DC 20590-0001

By Fax: (202) 493 2251

Dear Sir or Madam:

This responds to the Coast Guard's request for comments on Maritime Security contained in the December 30, 2002 Federal Register Notice at 67 FR 250, docket number USCG-2002-14069.

We strongly support the U.S. Coast Guard's initiatives that are designed to detect, deter, disrupt and respond to attacks against U.S. territory, population, vessels, facilities and critical maritime infrastructure by terrorist organizations.

Both the public and private sectors must share the costs and responsibilities that the war on terrorism requires. In order to succeed, all parties, including ships' crews, must participate in genuine collaborative effort. Everyone can accept onerous burdens if they are reasonably calculated to address risks of terrorism. Although anti-terrorism measures will have an added benefit of deterring other illegal activities in the maritime sector, the anti terrorism measures should be justified by terrorism risks, not by suspicions of other illegal activity.

Two implicit premises are included in our comments: first, that shore leave for ships' crews exists as a fundamental seafarers' right that authorities should deny only in compelling circumstances, and second, that seafarers should have access to seafarers' welfare services in port.

Right to Shore Leave:

For as long as mariners have gone to sea on merchant ships, shore leave has existed as a cherished right—but not as an absolute right. Like most individual rights, shore leave must be balanced against other interests. Mariners understand that such things as their vessel's operational schedule, security and safety requirements must sometimes take priority over

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their right to shore leave. Thoughtful ship operators know that they should not deny shore leave except for very compelling reasons.

Merchant mariners' right to shore leave existed in customary maritime law long before the right was recorded in the earliest written maritime codes from the Middle Ages. The traditional rule is that a ship's master can grant shore leave at his or her discretion. The decision to grant shore leave should not exist as a personal whim of the master, nor should a master deny shore leave as a punishment. Current United States law recognizes that shore leave is necessary for a mariner's health and for the safe and for the efficient operation of the vessel. The United States Supreme Court decided in the 1943 case of *Agnilar v Standard Oil Company* that:

"The assumption is hardly sound that the normal uses and purposes of shore leave are "exclusively personal" and have no relation to the vessel's business. Men cannot live for long cooped up aboard ship without substantial impairment of their efficiency, if not also serious danger to discipline. Relaxation beyond the confines of the ship is necessary if the work is to go on, more so that it may move smoothly. No master would take a crew to sea if he could not grant shore leave, and no crew would be taken if it could never obtain it. Even more for the seaman than for the landsman, therefore, "the superfluous is the necessary . . . to make life livable" and to get work done. In short, shore leave is an elemental necessity in the sailing of ships, a part of the business as old as the art, not merely a personal diversion.

The International Maritime Organization Convention on Facilitation of International Maritime Traffic, which ninety-two countries have ratified (including the United States), contains a modern codification of mariners' right to shore leave in its Article 3.19:

"Foreign crew members shall be allowed ashore by the public authorities while the ship on which they arrive is in port, provided that the formalities on arrival of the ship have been fulfilled and the public authorities have no reason to refuse permission to come ashore for reasons of public health, public safety or public order."

Similarly, the International Labor Organization's Seafarers' Identity Documents Convention, ratified by thirty-four countries, requires that member countries allow shore leave in Article 6.1:

"Each Member shall permit the entry into a territory for which this Convention is in force of a seafarer holding a valid seafarers' identity document..."

Shore leave is a right – not merely a privilege – that authorities can deny for legitimate maritime security purposes, but they should not deny the right should unreasonably.

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Access to Welfare Facilities:

Seafarers also have a right to access to seafarers' welfare facilities or services while their vessels are in port, either through shore leave or through visits to the vessel from representatives of seafarers' welfare agencies.

The customary international law right to providing welfare facilities to merchant mariners is codified in the International Labor Organization's Seafarers Welfare Convention, 1987 (No. 163) and Seafarers' Welfare Recommendation, 1987 (No. 173).

The following are comments keyed to the questions posed in Appendix A of USCG-2002-14069.

1. **From a port perspective, would these communicative processes meet your needs?**

Community public alert systems should include seafarers' centers and seafarers' welfare agencies to ensure notification of crews and port workers and to alert the agencies to respond to increased crew welfare needs accompanying heightened security levels.

8. **Who do you believe should be involved in Port Security Committees?**

The committees should include involvement from port chaplains, seafarers centers and seafarers welfare agencies, and these groups should be included as affected community listed in the section titled "who should attend the public meetings" of the notice.

10. **Do you have any suggestions of other ways to restrict or control activities within the port area at higher security levels?**

Port chaplains should be allowed access to vessels and crew during heightened security levels. Experience demonstrates that during heightened security conditions, crew anxiety, misinformation and family worries also increase. Port chaplains can serve as a vital link between crew, authorities and crews' families.

Under this scheme, would you participate in a Port Security Plan exercise?

Yes.

25. **Do you have a suggestion for appropriate security measures that a facility can take to meet these requirements that are not already listed in Part B paragraph 16.1 through 16.63?**

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The requirements should include measures for allowing crew access to shore leave and port chaplains/welfare agencies access to vessels such as included in NVIC 11-02 of 13 January 2003.

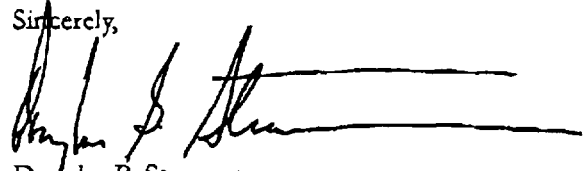
30. Do you believe the Coast Guard should require FSOs to attend training?

Yes, training should include familiarization with shipboard life, such as shipboard living and working conditions, crew hiring practices, voyage durations, contract durations, in-port times and importance of shore leave.

37. What factors do you believe the Coast Guard should consider in assessing the effectiveness of anti-terrorism measures at foreign ports?

The Coast Guard should consider crews' access to shore leave and the availability to crew of seafarers welfare facilities in foreign ports.

Sincerely,



Douglas B. Stevenson
Director, Center for Seafarers' Rights

FROM : SCI

FAX NO. : 12123498342

Mar. 11 2003 04:07PM P1



DEPT. OF TRANSPORTATION
DOCKETS

2003 MAR 11 P 4:

CENTER FOR SEAFARERS' RIGHTS

TO: UNITED STATES COAST GUARD, DEPARTMENT OF TRANSPORTATION DOCUMENT
MANAGEMENT FACILITY

FROM: CENTER FOR SEAFARERS' RIGHTS

SUBJECT: ADDENDUM TO 2/28/03 SUBMISSION USCG-2002-14069

DATE: 3/11/03

VIA FAX: 202/493-2251 **NO. OF PAGES:** 4

SUBMISSION TO THE DOCKET

This responds to the Coast Guard's request for comments on Maritime Security contained in the December 30, 2002 Federal Register Notice at 67 FR 250, docket number USCG-2002-14069 and a request the New York City Public Hearing for the submission of information regarding shore leave denials.

Our previous submission neglected to include data we received regarding shore leave denials in the ports of Philadelphia & Camden, PA. If possible, please include this information with our February 28, 2003 submission. Thank you very much, and we apologize for the earlier omission.

DATA SET #2

Snapshot Data

February 16, 2003-February 25, 2003

Port of Philadelphia & Camden, PA

Date	Vessel Name	Flag	Owner	No. of Crew & Nationality	Reason For Denial
2/18/03	Nexo Maersk	Denmark	Svenborg/191 2	12-Filipinos & 7 Danish	INS denied shore leave to all crew members and gave no reason.
2/18/03	Alfios I	Liberia	Whitney Maritime	Not available	Terminal (Hess Oil Corp.) has implemented new policy that does not allow shore leave to anyone (U.S. or foreign mariners), and denies access of ship's visitors to vessel.
2/19/03	Kapitan Rudnev	Cyprus	Kapitan Rudnev Shipping	23-Russians	All crew members have shore pass but SUNOCO Girard Pt. Terminal will not allow them to go ashore.
2/19/03	Regal Star	Panama	MCL	1-Korean; 1-Indian & 19 Filipinos	4 Filipinos were not issued shore leave because they do not have US visas.
2/19/03	Archimedes	Greece	Richmond Navigation	12-Pakistani & 13-Greeks	No shore leave for all crew members because they do not have US visas

DATA SET #2

Snapshot Data

February 16, 2003-February 25, 2003

Port of Philadelphia & Camden, PA

Date	Vessel Name	Flag	Owner	No. of Crew & Nationality	Reason For Denial
2/20/03	Saetta	Malta	Rubini Shipping	Not available.	Terminal (Hess Oil Corp.) has implemented new policy that does not allow shore leave to anyone (U.S. or foreign mariners), and denies access of ship's visitors to vessel.
2/20/03	Lykes Raider	Malta	Global Forum Shipping	21-Russian & 2 Romanian	No shore leave for all crew members because they do not have US visas
2/20/03	Maersk Scotland	Venezuela	Maersk	19 -Venezuelan	Terminal (SUNOCO, Marcus Hook) has implemented new policy that does not allow shore leave to anyone (U.S. or foreign mariners).
2/20/03	Inago	Liberia	Soponata-Bona	10-Filipinos, 4 Indians, 7 Portuguese & 2 Romanian	Terminal (Philips/Tosco) has implemented new policy that does not allow shore leave to anyone (U.S. or foreign mariners).
2/21/03	Belo Oriente	Hong Kong	Belo Maritime Transport	4-Indian,5 Shri Lankan,2 Chinese & 11 Myanmar	No shore leave for all crew members because INS claimed they might abscond or desert.

DATA SET #2

Snapshot Data

February 16, 2003-February 25, 2003

Port of Philadelphia & Camden, PA

Date	Vessel Name	Flag	Owner	No. of Crew & Nationality	Reason For Denial
2/22/03	NCC Jouf	Norway	National Chemicals Carrier	26-Filipinos, 5-Norwegians & 1 Finnish	Terminal (SUNOCO, Marcus Hook) has implemented new policy that does not allow shore leave to anyone (U.S. or foreign mariners).
2/22/03	Stena Vision	Bermuda	CM V-MAXI	5-Croatian; 10-Filipinos; 1-Korean, 1-Yugoslavian, 1-Romanian, 3-Indonesian, 1-Ghanian, 3-St. Vincent & 1 Cape Verde	Terminal (SUNOCO, Marcus Hook) has implemented new policy that does not allow shore leave to anyone (U.S. or foreign mariners).
2/23/03	Princess Susan	Panama	Noble Shipping	11 Filipinos & 20 Indians	1 Filipino crew member detained on board because he did not have a US visa. Rest of the crew had individual D visas and INS permitted shore leave.
2/23/03	Eagle Baltimore	Singapore	American Eagle Tankers	5-Malaysians, 8 Indians, 2 Chinese, 1 Bangladesh & 7 Filipinos	Terminal (Philips/Tosco) has implemented new policy that does not allow shore leave to anyone (U.S. or foreign mariners).